

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Notice PL-111**

**For:** State and County Offices

**Adjusted Gross Income (AGI) Provisions**

**Approved by:** Deputy Administrator, Farm Programs



**1 Overview**

**A**

**Background**

The Farm Security and Rural Investment Act of 2002 (the Act) provides that an individual or entity shall not be eligible to receive certain payments and benefits as specified in the Act if the average AGI of the individual or entity exceeds \$2.5 million. However, an individual or entity whose average AGI exceeds \$2.5 million may be considered in compliance with this limitation if at least 75 percent of the average AGI was derived from farming, ranching, or forestry operations, as defined by the Secretary.

The Act also requires that individuals and entities must submit information and documentation about AGI to be eligible for payments and benefits subject to the AGI limitation.

**Note:** The AGI limitation should not be confused with the qualifying gross revenue provisions applicable to the Noninsured Crop Disaster Assistance Program and other programs.

**B**

**Purpose**

This notice provides information on the following:

- applicability of the AGI limitation
- proposed AGI rule and procedures
- AGI compliance and the issuance of advance 2003 Direct and Counter-Cyclical Program (DCP) payments.

**Disposal Date**

June 1, 2003

11-27-02

**Distribution**

State Offices; State Offices relay to County Offices

## 2 Proposed AGI Provisions

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### A

#### Applicability

The AGI limitation:

- is effective for the 2003 through 2007 crop, program, or fiscal years
  - applies to eligibility for:
    - direct payments and counter-cyclical payments under DCP
    - loan deficiency payments
    - market loan gains
    - conservation program payments.
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### B

#### Determination of AGI

For an individual, the average AGI is based on AGI as reported on the final income tax filings, for the 3 years previous to the year for which benefits are requested. For 2003 payment eligibility purposes, the AGI amounts reported for the years 2002, 2001, and 2000 will be used. Any year in which AGI was zero, or there was no taxable income, will be excluded in the determination of AGI.

**Note:** Income tax returns for entities do not have an entry of AGI. Therefore, a comparable measure will be determined as set forth in the proposed rule.

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### C

#### Certification of Compliance

AGI certification will be accomplished by submitting either of the following:

- CCC-526 (Exhibit 1)
- a statement of AGI compliance with supporting documentation that is acceptable to FSA from a certified public accountant or an attorney.

Each entity and individual that is requesting payments or benefits subject to the AGI provision must provide a certification. This requirement also applies to individuals and entities having an ownership interest in this entity, regardless of the amount of interest held. Failure to comply with the AGI limitation will result in ineligibility for payments and benefits subject to the AGI limitation.

**Note:** Individuals who attend a church or belong to a club, fraternal organization, association, or similar type of entity that is requesting payments or benefits, do not hold an ownership interest in the entity. Therefore, the members of these entities do not have to submit an AGI certification for the entity to meet the AGI provision.

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Continued on the next page

## 2 Proposed AGI Provisions (Continued)

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### D

#### **Entity With Multiple Shareholders**

For an entity such as a corporation with stockholders, a limited liability company, or a trust, both the entity and each individual stockholder or interest holder must certify to compliance with the AGI provision, regardless of the interest held. If at the fifth level of ownership interest in an entity, an ownership interest is held by an entity, that ownership interest will be ineligible for payments and benefits subject to AGI.

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### E

#### **Multi-County and Multi-State Producers**

A producer will be required to submit only one AGI certification. COC in the producer's control county will make the AGI compliance determination, just as they do for the other payment eligibility and payment limitation determinations. This determination shall then be shared with the other counties in the same manner as other payment eligibility and limitation information. Also, if the AGI compliance determination is adverse, the producer notification will be issued from only the control county. The written notification will include appeal rights according to 1-APP.

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### F

#### **Conservation Reserve Program (CRP) Contracts**

All multi-year contracts and agreements **approved and effective** before October 1, 2002, will not be subject to AGI requirement for payment eligibility. Refer to Notice CRP-414 for additional information on CRP participation. All other CRP contracts and multi-year agreements approved and effective after October 1, 2002, will be subject to AGI requirements.

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### G

#### **Issuing Advance 2003 DCP Payments**

Compliance with the AGI provision is a requirement for the receipt of 2003 DCP payments. It is anticipated that the final rule for AGI will not be published before the scheduled issuance of advance 2003 direct payments. Therefore, for the issuance of the advance 2003 DCP payments:

- follow Notice DCP-58
  - use CCC-526 (Exhibit 1) until further notice.
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### 3 Proposed Regulations and Procedures

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#### A

##### **Proposed Rule**

The proposed rule was published on October 28, 2002, in the FR as 7 CFR Part 1400, Subpart G, Income Limits. A copy may be obtained online as follows:

- go to **[www.access.gpo.gov/su\\_docs/fedreg/frcont02.html](http://www.access.gpo.gov/su_docs/fedreg/frcont02.html)**
  - click on “Monday, October 28, 2002”
  - scroll down to “Commodity Credit Corporation”
  - under “Proposed Rules”, select “Payment limitation and eligibility: Program participation; income limits, 65738-65742”.
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#### B

##### **Handbook Procedures**

The policies and procedures for implementing AGI provisions will be in 1-PL, Part 6 in a forthcoming amendment. The procedures for automation and software activities will be in 2-PL in a forthcoming amendment. These amendments will be issued upon the publication of the final rule.

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# Example of CCC-526, Payment Eligibility, Average Adjusted Gross Income Certification

This form is available electronically. <b>CCC-526</b> (11-26-02)		<b>U.S. DEPARTMENT OF AGRICULTURE</b> Commodity Credit Corporation		1A. County FSA Office or Service Center Address (Include Zip Code)	
<b>PAYMENT ELIGIBILITY</b> <b>AVERAGE ADJUSTED GROSS INCOME CERTIFICATION</b>				1B. Telephone Number (Include Area Code):	
The authority to collect the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.					
<b>NOTE:</b> The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a), as amended. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), and the regulations at 7 CFR Part 1400, as amended, authorize the collection of the information required by this certification. The information will be used to establish payment eligibility in accordance with the requirements of the law for applicants who are requesting program benefits subject to these provisions. Providing this information is voluntary; however, failure to furnish the requested information will result in a determination of ineligibility for program benefits. This information may be used by and provided to other agencies, IRS, Department of Justice, other State or Federal law enforcement agencies, and in response to orders of a court magistrate, or administrative tribunal. All information provided herein is subject to verification by the Commodity Credit Corporation. As provided in various statutes, failure to provide true and correct information may result in civil suit or criminal prosecution and the assessment of penalties or pursuit of other remedies. <b>PLEASE RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OR SERVICE CENTER OFFICE.</b>					
2A. Individual or Entity's Name and Address (Include Zip Code)				3. Program Year	
				4. Identification Number (SSN or Tax ID No.)	
2B. Telephone Number (Include Area Code):					
<b>CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME:</b> Each individual or entity that requests program benefits must complete a certification of average adjusted gross income.					
By signing this form, I acknowledge that:					
<ul style="list-style-type: none"> <li>• all definitions, requirements, and examples on Page 3 of this form were reviewed;</li> <li>• this certification of average adjusted gross income is true and correct, and will be considered a continuous certification through 2007, unless changes or revisions are submitted;</li> <li>• it is my responsibility to timely notify FSA in writing of any changes in the farming, ranching or forestry operation, or financial status that may affect this certification;</li> <li>• evidence such as tax records, accountant's certification, or other documentation may be required to validate this certification.</li> </ul>					
5. Type of Operation (Check One)					
<input type="checkbox"/> Individual (Complete Item 6)		<input type="checkbox"/> Limited Partnership, Limited Liability Company, Limited Liability Partnership or Similar Entity (Complete Item 9)			
<input type="checkbox"/> Trust or Estate (Complete Item 7)		<input type="checkbox"/> Tax-Exempt or Non-Profit Organizations (Complete Item 10)			
<input type="checkbox"/> Corporation (Complete Item 8)					
6. <b>Individual</b> For individuals that file the IRS Form 1040, line 33 represents the adjusted gross income and line 18 represents the income from farming, ranching or forestry operations. The Schedule F is the source for line 18.					
A. The average of the adjusted gross income, as specified on line 33 of the IRS Form 1040 (or similar item on IRS Forms for individuals) for the applicable 3 years, was \$2.5 million or less.				YES <input type="checkbox"/> NO <input type="checkbox"/>	
If "NO", proceed to Item 6B.					
B. The average of the amount represented to be from farming, ranching, or forestry operations on line 18 on the IRS Form 1040 (or similar on Form 1040A or 1040EZ) for the applicable years, was at least 75 percent of the amount on line 33 (or comparable amount on Form 1040A or 1040EZ).				YES <input type="checkbox"/> NO <input type="checkbox"/>	
C. Signature				Date (MM-DD-YYYY)	
<small>The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.</small>					

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## Example of CCC-526, Payment Eligibility, Average Adjusted Gross Income Certification (Continued)

CCC-526 (Page 2 of 3) (11-26-02)

**CERTIFICATION OF AVERAGE ADJUSTED GROSS INCOME (Continuation)**

**7. Trust or Estate** For a trust or estate, the adjusted gross income is the total income and charitable contributions reported to IRS. On the IRS Form 1041, the total income is found on line 17 and the amount for charitable contributions is on line 13. The income for farming, ranching and forestry is found on line 6 and is derived from the Schedule F.

A. The average of the adjusted gross income, as specified by line 17 plus line 13 on the IRS Form 1041 (or similar lines on comparable IRS Forms for trusts) for the applicable 3 years, was \$2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 7B.

B. The average of the amount represented to be from farming, ranching, or forestry operations on line 6 of the IRS Form 1041 (or comparable IRS Forms for trusts) for the applicable years, was at least 75 percent of the total amount of lines 17 and 13 (or comparable lines on other IRS Forms for trusts). YES ☐ NO ☐

C. Signature \_\_\_\_\_ Date (MM-DD-YYYY) \_\_\_\_\_

**8. Corporation** For a corporation, the adjusted gross income is the total of the final taxable income and any reported charitable contributions. On the IRS Form 1120, these amounts are represented on lines 28 and 19 respectively. The income from farming, ranching and forestry is represented on line 10, on the IRS Form 1120, and is derived from the Schedule F.

A. The average of the adjusted gross income, the total amount specified on lines 28 and 19 of the IRS Form 1120 (or similar on comparable IRS Forms for corporations) for the applicable 3 years, was \$2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 8B.

B. The average of the amount represented to be from farming, ranching, or forestry operations on line 10 (or similar on comparable IRS Forms for corporations) for the applicable years, was at least 75 percent of the total amount of lines 28 and 19 (or comparable lines on other IRS Forms for corporations). YES ☐ NO ☐

C. Signature \_\_\_\_\_ Date (MM-DD-YYYY) \_\_\_\_\_

**9. Limited Partnership (LP), Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Similar Entity** For an LP, LLC or LLP, the adjusted gross income is the total income from trade or business activities plus guaranteed payments to the members. On the IRS Form 1065, the total income from trade or business activities is found on line 22 and the guaranteed payments to member is on line 10. The income from farming, ranching and forestry is found on line 5 and is derived from the Schedule F.

A. The average of the adjusted gross income, as specified by line 22 plus line 10 on the IRS Form 1065 (or similar lines on other IRS Forms for an LP, LLC or LLP) for the applicable 3 years, was \$2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 9B.

B. The average of the amount represented to be from farming, ranching, or forestry operations on line 5 of the IRS Form 1065 (or comparable IRS Forms for an LP, LLC or LLP) for the applicable years, was at least 75 percent of the total amount of lines 22 and 10 (or comparable lines on other IRS Forms for an LP, LLC or LLP). YES ☐ NO ☐

C. Signature \_\_\_\_\_ Date (MM-DD-YYYY) \_\_\_\_\_

**10. Tax-exempt or Non-profit Organization** For a tax-exempt and non-profit organization, the adjusted gross income is the unrelated business taxable income excluding any income from non-commercial activities. On IRS Form 990, the unrelated business taxable income is found on line 12 and the income reported for non-commercial activities is found on line 15. On the same IRS form, income from farming, ranching and forestry would be found on line 11.

A. The average of the adjusted gross income, as specified by lines 12 minus income also included in line 15 on the IRS Form 990 (or comparable IRS Forms and documentation) for the applicable 3 years, was \$2.5 million or less. YES ☐ NO ☐

If "NO", proceed to Item 10B.

B. The average of the amount represented on line 11 on IRS Form 990 (or comparable documentation), and that may have been from farming, ranching or forestry interests for the applicable years, was at least 75 percent of the total of lines 12 and 15 on IRS Form 990 (or comparable IRS Forms and documentation). YES ☐ NO ☐

C. Signature \_\_\_\_\_ Date (MM-DD-YYYY) \_\_\_\_\_

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## Example of CCC-526, Payment Eligibility, Average Adjusted Gross Income Certification (Continued)

CCC-526 (Page 3 of 3) (11-26-02)

### AVERAGE ADJUSTED GROSS INCOME

The Farm Security and Rural Investment Act of 2002 included average adjusted gross income as a payment eligibility requirement. Any individual or entity requesting certain 2003 through 2007 program payments will be subject to this provision. Any individual or entity that is determined to have an average adjusted gross income, as defined, that is less than 75 percent from farming, ranching or forestry operations and that exceeds \$2.5 million will be ineligible for any covered benefit during the applicable year.

### DEFINITIONS AND OTHER INFORMATION

**Average Adjusted Gross Income** means the average of the adjusted gross income or comparable measure of the individual or entity over the preceding 3 tax years. For instance, if 2003 program benefits are requested, the tax years for average adjusted gross income determination would be 2002, 2001 and 2000.

**Entity** means a corporation, joint stock company, association, limited partnership, charitable organization, or similar entity, including any such entity or organization participating in the operation as a partner in a general partnership, a participant in a joint venture, a grantor in a revocable trust, or as a participant in a similar entity, as determined by the Secretary.

**Covered Benefit** means any payment or benefit under the programs subject to the regulations at 7 CFR Part 1400.

**Commensurate Reduction** means that any covered benefit issued to an entity, general partnership, or joint venture shall be reduced by an amount that is commensurate with the direct or indirect ownership interest the entity, general partnership, or joint venture of each individual who does not comply with the adjusted gross revenue requirement.

**Certification of Compliance** means that an individual or entity shall provide either a certification by a certified public accountant that the average adjusted gross income does not exceed the requirement; or provide information and documentation regarding the adjusted gross income through other procedures established by the Secretary.

**Income from farming, ranching or forestry** means income derived from producing crops, livestock, or unfinished raw forestry products.

**Special Rules for Certain Individual and Entities** are applicable to those entities that are not required to file a tax return, and individuals and entities that did not have taxable income in one or more tax years used to determine the 3-year average. For example, if an entity was in existence only two years prior to the year of requesting program benefits, then the average adjusted gross income would only include those two tax years.

### EXAMPLES

**Situation 1** - Joe Smith requests benefits from the Direct and Counter-Cyclical Payment Program and from a Conservation Reserve Program contract approved effective for 2003. Mr. Smith's average adjusted gross income exceeds \$2.5 million and was all from farming and livestock operations.

**Determination** - At least 75 percent of the average adjusted gross income was received from farming, ranching and forestry operations. Therefore, Mr. Smith complies adjusted gross income requirement and is eligible for the program benefits requested.

**Situation 2** - Grace Jones is a share rent landowner and requests benefits from the Direct and Counter-Cyclical Payment Program on a contract with her tenant. Ms. Jones' average adjusted gross income was less than \$2.5 million and over 75 percent was from non-agricultural interests.

**Determination** - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, but the amount was less than \$2.5 million. Therefore, Ms. Jones is eligible for the program benefits requested.

**Situation 3** - William Davis is a share rent landowner and requests benefits from the Direct and Counter-Cyclical Payment Program on a contract with his tenant. Mr. Davis' average adjusted gross income was greater than \$2.5 million and over 75 percent was from non-agricultural sources.

**Determination** - Less than 75 percent of the average adjusted gross income was from farming, ranching and forestry, and exceeds \$2.5 million. Therefore, Mr. Davis is ineligible for the program benefits requested.

**Situation 4** - Mark Johnson is a 25 percent stockholder in Johnson Farms, Inc. Johnson Farms requests benefits from the Direct and Counter-Cyclical Payment Program. The average adjusted gross income for Johnson Farms was all from farming and ranching. The average adjusted gross income for each of the stockholders was mostly from non-agricultural sources and the amounts were less than \$2.5 million with the exception of Mark.

**Determination** - Any program benefit issued to an entity, general partnership, or joint operation shall be reduced by an amount commensurate with the direct or indirect ownership interest of an individual or entity who has an average adjusted gross income in excess of \$2.5 million. Therefore, Johnson Farms is eligible for the benefits requested, but reduced by the 25 percent, which represents the interest held by Mark.